

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GRAYS HARBOR ADVENTIST CHRISTIAN  
SCHOOL, a Washington non-profit  
organization; GREG G. BOGDANOVICH, an  
individual; MARY LAFOREST, an individual,  
and BRUCE KELLY, an individual, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

CARRIER CORPORATION, a Delaware  
corporation,

Defendant.

NO. C05-05437 RBL

**FIRST AMENDED COMPLAINT —  
CLASS ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF, AND  
RESTITUTION**

**JURY DEMAND**

**I. INTRODUCTION**

1.1 Plaintiffs Grays Harbor Adventist Christian School (the “School”), Greg  
Bogdanovich, Mary LaForest and Bruce Kelly bring this action on behalf of themselves and all  
similarly situated individuals and entities who own or owned high-efficiency condensing  
furnaces manufactured by Carrier Corporation (“Carrier”).

1.2 These furnaces contain defective secondary heat exchangers that prematurely  
fail damaging other components of the furnace.

FIRST AMENDED COMPLAINT — CLASS ACTION FOR  
DAMAGES, INJUNCTIVE RELIEF, AND RESTITUTION  
[NO. C05-05437 RBL]

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1 heat exchanger failed in 1995, and the previous owner was forced to replace it with a new  
 2 secondary heat exchanger part. Despite installation of the new part, just over eleven years later,  
 3 Mr. Kelly was also forced to replace the secondary heat exchanger when it failed again. During  
 4 a routine inspection, a technician determined that Mr. Kelly's flue gas contained over 1000  
 5 ppm of carbon monoxide, well over the 400 ppm safety allowance specified by the American  
 6 National Standards Institute (ANSI). Mr. Kelly paid \$1,500.00 to replace the secondary heat  
 7 exchanger in the furnace for the second time.

8       2.5 Defendant Carrier Corporation ("Carrier") is a Delaware corporation  
 9 headquartered in Connecticut that does business in the state of Washington. Carrier, operating as  
 10 Bryant, is the largest furnace manufacturer in the U.S. It manufactured the high-efficiency  
 11 condensing furnaces purchased by Plaintiffs and other putative Class Members.

### 12                                   **III. JURISDICTION**

13       3.1 This is a class action.

14       3.2 Members of the proposed plaintiffs' class are citizens of Washington, a state  
 15 different from the home state of Defendant.

16       3.3 On information and belief, the aggregate claims of individual class members  
 17 exceed \$5,000,000, exclusive of interest and costs.

18       3.4 As such, jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

### 19                                   **IV. VENUE**

20       4.1 Defendant, through its business of selling, marketing, and/or warranting its high-  
 21 efficiency condensing furnaces, has established sufficient contacts in this district such that it is  
 22 subject to personal jurisdiction here. Pursuant to 20 U.S.C. § 1391(c), therefore, Defendant is  
 23 deemed to reside in this district.

24       4.2 In addition, a substantial part of the events or omissions giving rise to these  
 25 claims and a substantial part of the property that is the subject of this action are situated in this  
 26 district.

1           4.3     As such, venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

2                                   **V. APPLICABLE LAW**

3           5.1     Washington State law applies to all claims in this action.

4                                   **VI. FACTUAL ALLEGATIONS**

5           6.1     High-efficiency condensing (or 90%) furnaces maximize efficiency by  
6 employing a second heat exchanger to extract more heat from the hot gases through  
7 condensation. These furnaces are typically more expensive than non-condensing (or 80%)  
8 furnaces.

9           6.2     Carrier has been manufacturing, warranting, advertising, and selling 90%  
10 furnaces since the mid- to late 1980s.

11          6.3     The condensate formed in the secondary heat exchanger of a condensing furnace  
12 is acidic, creating a highly corrosive environment. As such, most such heat exchangers are  
13 manufactured out of corrosion-resistant stainless steel, a material more costly than ordinary  
14 carbon steel or other engineering metals.

15          6.4     On information and belief, Carrier, in an effort to reduce costs, manufactured its  
16 secondary heat exchangers out of mild steel or other less costly engineering metals. It then  
17 applied a polypropylene laminate ostensibly to protect the corrosion-vulnerable material.

18          6.5     Both the liner material itself and the manner in which it was placed on the heat  
19 exchanger failed in their purpose.

20          6.6     The resulting corrosion of the heat exchanger introduces solids into the  
21 condensate that plug up the system causing condensate to back up into the fan or otherwise leak  
22 from the secondary heat exchanger, damaging other components of the furnace and causing a  
23 variety of operational problems.

24          6.7     Recognizing the problem, Carrier has been modifying its design of the  
25 secondary heat exchanger used in these furnaces since 1998. It has changed both the  
26

1 underlying material of construction, the coating materials used, and the method of applying the  
2 coating to the underlying material of construction.

3 6.8 Contrary to the facts, Carrier gave the impression its furnaces were built to last  
4 by warranting they were “free from defects in material and workmanship.” Carrier specifically  
5 warranted the secondary heat exchanger would be “free from defects in material and  
6 workmanship” during the lifetime of the original owner.

7 6.9 Carrier’s warranty, however, covers only the cost of the heat exchanger. It  
8 specifically does not cover the much higher labor costs associated with actually diagnosing and  
9 replacing the defective heat exchanger — costs that can range from \$500 to \$1,500.

10 6.10 Carrier has refused to provide any further relief to its disappointed customers.

## 11 **VII. TOLLING**

12 7.1 Because the defects in the design and/or manufacture of the secondary heat  
13 exchanger are not detectable until manifestation of the damage, Plaintiffs and the Class were  
14 not reasonably able to discover the problem until long after installation, despite their exercise  
15 of due diligence.

16 7.2 Indeed, even after Class members were aware their secondary heat exchangers  
17 had failed, or were failing, Defendant prevented them from ascertaining an inherent deficiency  
18 was the cause by asserting the problems with Plaintiffs’ furnaces were due to faulty installation,  
19 improper operation, or local conditions.

20 7.3 Any applicable statutes of limitation have, therefore, been tolled by Defendant’s  
21 concealment and denial of the facts alleged herein. Further, Defendant is estopped from relying  
22 on any statutes of limitation because of its concealment of the defective nature of the furnaces.

## 23 **VIII. CLASS ACTION ALLEGATIONS**

24 8.1 Plaintiffs bring this lawsuit as a class action on behalf of themselves and all  
25 other Washington residents similarly situated as members of a proposed plaintiff class pursuant  
26

1 to CR 23(a) and (b)(3). This action satisfies the numerosity, commonality, typicality,  
 2 adequacy, predominance, and superiority requirements of those provisions.

3 8.2 The Class is defined as:

4 All individuals and entities in the state of Washington who  
 5 currently own Carrier 90% high-efficiency condensing furnaces  
 6 manufactured after January 1, 1989, and equipped with  
 7 polypropylene-laminated secondary heat exchangers ("PPL-  
 8 CHXs"), and former owners of such furnaces in the state of  
 9 Washington whose furnaces experienced CHX failure. Excluded  
 from the Class are Defendant, any entity in which Defendant has  
 a controlling interest or which has a controlling interest of  
 Defendant, and Defendant's legal representatives, assigns and  
 successors. Also excluded are the judge to whom this case is  
 assigned and any member of the judge's immediate family.

10 8.3 Claims for personal injury are specifically excluded from the Class.

11 8.4 Although the exact number of Class members is uncertain and can only be  
 12 ascertained through appropriate discovery, Plaintiffs are informed and reasonably believe the  
 13 number is great enough such that joinder is impracticable. The disposition of the claims of  
 14 these Class members in a single class action will provide substantial benefits to all parties and  
 15 to the Court.

16 8.5 The claims of the representative Plaintiffs are typical of the claims of the Class  
 17 in that the representative Plaintiffs, like all Class members, own high-efficiency furnaces  
 18 manufactured by Carrier in which the secondary heat exchangers have failed and/or are failing  
 19 prematurely. The representative Plaintiffs, like all Class members, have been damaged by  
 20 Defendant's misconduct in that they incurred or will incur the cost of repairing damage caused  
 21 by the defective heat exchangers and/or prematurely replacing their furnaces. Furthermore, the  
 22 factual bases of Defendant's misconduct is common to all Class members and represents a  
 23 common thread of fraudulent, deliberate, and negligent misconduct resulting in injury to all  
 24 members of the Class.

1           8.6     There are numerous questions of law and fact common to Plaintiffs and the  
2 Class. Those questions predominate over any questions that may affect individual Class  
3 members, and include the following:

4                   8.6.1   Whether the secondary heat exchangers manufactured by Carrier are  
5 defectively designed and/or manufactured such that they are not suitable for their intended use.

6                   8.6.2   Whether Defendant knew or should have known of the inherent design  
7 and/or manufacturing defect in its high-efficiency furnaces;

8                   8.6.3   Whether Defendant fraudulently concealed from and/or failed to disclose  
9 to Plaintiffs and the Class the inherent problems with its high-efficiency furnaces;

10                  8.6.4   Whether Defendant had a duty to Plaintiffs and the Class to disclose the  
11 inherent problems with its high-efficiency furnaces;

12                  8.6.5   Whether the facts concealed and/or not disclosed by Defendant to  
13 Plaintiffs and the Class are material facts;

14                  8.6.6   Whether as a result of Defendant's concealment of and/or failure to  
15 disclose material facts, Plaintiffs and the Class acted to their detriment by purchasing high-  
16 efficiency furnaces manufactured by Defendant;

17                  8.6.7   Whether Defendant breached its express warranty regarding its high-  
18 efficiency furnaces' performance;

19                  8.6.8   Whether Defendant failed to adequately warn Plaintiffs and the Class  
20 regarding the limitations of its high-efficiency furnaces;

21                  8.6.9   Whether Defendant engaged in unfair competition or unfair deceptive  
22 acts or practices when it concealed the limitations and failed to warn Plaintiffs and Class  
23 members of the defects in its high-efficiency furnaces;

24                  8.6.10 Whether Defendant's conduct in marketing and selling its high-  
25 efficiency furnaces constitutes a violation of the Washington Consumer Protection Act,  
26 RCW 19.86 *et seq.*;

1           8.6.11 Whether Defendant should be declared financially responsible for  
2 notifying all Class members of the problems with its high-efficiency furnaces and for the costs  
3 and expenses of repair and replacement of all such furnaces;

4           8.6.12 Whether Defendant's representations regarding its high-efficiency  
5 furnaces had a capacity to deceive a substantial portion of the consuming public;

6           8.6.13 Whether Plaintiffs and the Class are entitled to compensatory,  
7 exemplary, and statutory damages, and the amount of such damages; and

8           8.6.14 Whether Defendant should be ordered to disgorge, for the benefit of the  
9 Class, all or part of the ill-gotten profits it received from the sale of defective high-efficiency  
10 furnaces, and/or to make full restitution to Plaintiffs and the members of the Class.

11           8.7 Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs  
12 have retained counsel with substantial experience in prosecuting consumer class actions, and  
13 specifically actions involving defective products. Plaintiffs and their counsel are committed to  
14 prosecuting this action vigorously on behalf of the Class, and have the financial resources to do  
15 so. Neither Plaintiffs nor their counsel has any interests adverse to those of the Class.

16           8.8 Plaintiffs and the members of the Class have all suffered and will continue to  
17 suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. A class  
18 action is superior to other available methods for the fair and efficient adjudication of the  
19 controversy. Absent a class action, most members of the Class likely would find the cost of  
20 litigating their claims to be prohibitive, and would have no effective remedy at law. Because of  
21 the relatively small size of the individual Class member's claims, it is likely that only a few  
22 Class members could afford to seek legal redress for Defendant's misconduct. Absent a class  
23 action, Class members will continue to incur damages and Defendant's misconduct will  
24 continue without remedy. Class treatment of common questions of law and fact would also be  
25 superior to multiple individual actions or piecemeal litigation in that class treatment will  
26



1 conserve the resources of the courts and the litigants, and will promote consistency and  
 2 efficiency of adjudication.

3 **IX. FIRST CLAIM FOR RELIEF**  
 4 **(Actionable Misrepresentation)**

5 9.1 Plaintiffs hereby incorporate by reference the allegations contained in the  
 6 preceding paragraphs of this Complaint.

7 9.2 Defendant knew or should have known its high-efficiency furnaces were  
 8 defectively designed and/or manufactured, would fail prematurely, were not suitable for their  
 9 intended use, and otherwise were not as warranted and represented.

10 9.3 Defendant fraudulently, negligently, or recklessly concealed from and/or failed  
 11 to disclose to Plaintiffs and the Class the defective nature of its high-efficiency furnaces.

12 9.4 Defendant was under a duty to Plaintiffs and the Class to disclose the defective  
 13 nature of its high-efficiency furnaces because (i) Defendant was in a superior position to know  
 14 the true state of the facts about the design and/or manufacturing defect in its high-efficiency  
 15 furnaces because the design and/or manufacturing defect is latent; (ii) Defendant made partial  
 16 disclosures about the quality of its high-efficiency furnaces without revealing their true  
 17 defective nature; and (iii) Defendant actively concealed the defective nature of its high-  
 18 efficiency furnaces from Plaintiffs and the Class.

19 9.5 The facts concealed and/or not disclosed by Defendant to Plaintiffs and the  
 20 Class are material facts in that a reasonable person would have considered those facts to be  
 21 important in deciding whether or not to purchase Defendant's high-efficiency furnaces. Had  
 22 Plaintiffs and the Class known the defective nature of Defendant's high-efficiency furnaces,  
 23 they would not have purchased them or would have paid less for them.

24 9.6 Defendant intentionally, recklessly, or negligently concealed and/or failed to  
 25 disclose the true nature of the design and/or manufacturing defect in its high-efficiency  
 26 furnaces for the purpose of inducing Plaintiffs and the Class to act thereon, and Plaintiffs and

1 the Class justifiably relied to their detriment upon the truth and completeness of Defendant's  
 2 representations about its high-efficiency furnaces. This is evidenced by Plaintiffs' and Class  
 3 members' purchase of Defendant's high-efficiency furnaces.

4 9.7 Defendant continued to conceal the defective nature of its high-efficiency  
 5 furnaces even after members of the Class began to report problems. Indeed, Defendant  
 6 continues to cover up and conceal the true nature of the problem.

7 9.8 As a direct and proximate cause of Defendant's misconduct, Plaintiffs and the  
 8 Class have suffered actual damages in that (i) the furnaces in their homes and other structures  
 9 are defectively designed and manufactured, and (ii) the furnaces in their homes or other  
 10 structures have failed and will continue to fail prematurely, requiring them to expend money to  
 11 diagnose, repair, and/or replace their secondary heat exchangers, or their furnaces in their  
 12 entirety.

13 9.9 As a result of Defendant's misconduct, Plaintiffs and the Class are entitled to  
 14 compensatory damages, attorneys' fees, costs, and interest thereon.

15 **X. SECOND CLAIM FOR RELIEF**  
 16 **(Violation of Washington's Consumer Protection Act,**  
 17 **RCW 19.86 *et seq.*)**

18 10.1 Plaintiffs hereby incorporate by reference the allegations contained in the  
 19 preceding paragraphs of this Complaint.

20 10.2 Defendant engaged in unfair or deceptive acts or practices when it:  
 21 (i) represented its high-efficiency furnaces would last the expected lifetime even though it  
 22 lacked credible evidence to support those claims and, in fact, had substantial evidence to the  
 23 contrary; (ii) failed to disclose its knowledge of the defects in the product, but instead  
 24 continued to advertise it as a product that could be expected to last a lifetime; (iii) failed to  
 25 disclose the defective nature of its high-efficiency furnaces to Plaintiffs and Class members;  
 26 and (iv) limited its warranty obligations in an unfair and unconscionable way in light of its

1 failure to disclose the true defective nature of its high-efficiency furnaces to Plaintiffs and Class  
2 members.

3 10.3 Defendant either knew or should have known its high-efficiency furnaces were  
4 defectively designed and/or manufactured, would fail prematurely, were not suitable for their  
5 intended use, and otherwise were not as warranted and represented by Defendant.

6 10.4 Defendant's unfair or deceptive acts or practices repeatedly occurred in  
7 Defendant's trade or business, and were capable of deceiving a substantial portion of the  
8 purchasing public.

9 10.5 As a direct and proximate cause of Defendant's unfair or deceptive acts or  
10 practices, Plaintiffs and the Class have suffered actual damages in that they purchased and/or  
11 installed in their homes and other structures a product that is defective and that has failed  
12 prematurely due to design and/or manufacturing deficiencies and the use of substandard  
13 materials. These failures have caused and will continue to cause Plaintiffs and the Class  
14 members to incur expenses diagnosing, repairing, and/or replacing their secondary heat  
15 exchangers, or their high-efficiency furnaces in their entirety.

16 10.6 As a result of Defendant's unfair and deceptive practices, Plaintiffs and the  
17 Class are entitled to injunctive relief in the form of restitution and/or disgorgement of funds  
18 paid to Defendant to purchase their high-efficiency furnaces, or to repair and replace their high-  
19 efficiency furnaces, as well as compensatory and treble damages, attorneys' fees, and costs  
20 pursuant to RCW 19.86 *et seq.*

21 **XI. THIRD CLAIM FOR RELIEF**  
22 **(Unjust Enrichment)**

23 11.1 Plaintiffs hereby incorporate by reference the allegations contained in the  
24 preceding paragraphs of this Complaint.

1 11.2 Defendant received monies as a result of Plaintiffs' and Class members'  
 2 purchases of its high-efficiency furnaces, and Defendant wrongfully accepted and retained  
 3 these benefits to the detriment of Plaintiffs and Class members.

4 11.3 Defendant's enrichment at the expense of Plaintiffs and Class members was  
 5 unjust.

6 11.4 As a result of Defendant's wrongful conduct, Plaintiffs and the Class are entitled  
 7 to restitution from and institution of a constructive trust disgorging all profits, benefits, and  
 8 other compensation obtained by Defendant, plus attorneys' fees, costs, and interest thereon.

9 **XII. FOURTH CLAIM FOR RELIEF**  
 10 **(Breach Of Express Warranty)**

11 12.1 Plaintiffs hereby incorporate by reference the allegations contained in the  
 12 preceding paragraphs of this Complaint.

13 12.2 Defendant expressly warranted its high-efficiency condensing furnaces as free  
 14 from defects for at least one full year. Defendant further expressly warranted its secondary heat  
 15 exchanger to be free from actual manufacturing defects for the life of the original purchaser, or  
 16 for 20 years if the furnace was resold.

17 12.3 Plaintiffs and Class Members justifiably relied upon Defendant's representations  
 18 and justifiably acted in ignorance of the material facts Defendant omitted and concealed when  
 19 they decided to purchase condensing furnaces manufactured by Carrier.

20 12.4 Defendant has breached its express warranty to Plaintiffs and Class Members in  
 21 that the furnaces were defective from the day they were installed and are destined to fail  
 22 prematurely.

23 12.5 Defendant has been on notice of their breach of express warranties by Plaintiffs  
 24 and Class members through warranty claims previously made.

12.6 As a direct result of the failure of the secondary heat exchangers to perform as warranted, Plaintiffs and the Class have incurred and will continue to incur expenses to diagnose, repair, and replace their furnaces.

12.7 Any contractual language contained in Defendant's published warranties that attempts to disclaim express warranties or limit remedies is unconscionable, fails to conform to the requirements for limiting warranties on remedies under applicable law, causes the warranties to fail of their essential purpose, and is, thus, unconscionable and void.

### **XIII. RELIEF REQUESTED**

Plaintiffs, on behalf of themselves and all others similarly situated, request the Court enter judgment against Defendant, as follows:

13.1 An order certifying the proposed plaintiff Class, designating Plaintiffs as named representatives of the Class, and designating the undersigned as Class Counsel;

13.2 A declaration that Defendant is financially responsible for notifying all Class members of the problems with its high-efficiency furnaces;

13.3 An order enjoining Defendant from further deceptive advertising, marketing, distribution, and sales practices with respect to its high-efficiency furnaces, to cease its warranty claims program, and to remove and replace Plaintiffs' and Class members' high-efficiency furnaces with a suitable alternative product;

13.4 An award to Plaintiffs and the Class of compensatory, exemplary, and statutory damages, including interest thereon, in an amount to be proven at trial;

13.5 A declaration that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of its high-efficiency furnaces, or to make full restitution to Plaintiffs and the members of the Class;

13.6 An award of attorneys' fees and costs, as allowed by law;

13.7 An award of pre-judgment and post-judgment interest, as provided by law;

1 13.8 For leave to amend the Complaint to conform to the evidence produced at trial;  
2 and

3 13.9 Such other or further relief as may be appropriate under the circumstances.

4 **XIV. DEMAND FOR JURY TRIAL**

5 14.1 Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury of any and all  
6 issues in this action so triable of right.

7 DATED this 27th day of July, 2007.

8 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP  
9

10  
11 By: /s/ Jonathan D. Selbin

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